

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division**

CENTER FOR BIOLOGICAL)
DIVERSITY,)
)
Plaintiff,)
)
v.) Civil Action No.: 4:21-cv-132-EWH-LRL:
)
UNITED STATES MARITIME)
ADMINISTRATION, PETE BUTTIGIEG,)
in his official capacity, and ANN C.)
PHILLIPS, in her official capacity,)
)
Defendants.)
)

**MOTION TO APPROVE STIPULATED SETTLEMENT
OF PLAINTIFF'S CLAIM FOR COSTS OF LITIGATION
INCLUDING REASONABLE ATTORNEY FEES**

This Stipulated Settlement Agreement is made between Plaintiff and Defendants (collectively referred to as “the Parties”) to resolve Plaintiff’s claim to recover its costs of litigation, including reasonable attorney’s fees, incurred in the above-captioned matter pursuant to Section 11(g)(4) of the Endangered Species Act, 16 U.S.C. § 1540(g)(4).

In support of this Stipulation, the Parties state as follows:

WHEREAS Plaintiff filed a complaint in the above-captioned litigation on October 12, 2021, asserting two separate claims for relief against Defendants;

WHEREAS Plaintiff moved for summary judgment on its claims on March 25, 2022;

WHEREAS Defendants filed an opposition and cross-motion for summary judgment on Plaintiff's claims on April 25, 2022;

WHEREAS the Court fully resolved this matter on the merits on March 31, 2023.

granting in part and denying in part, the parties' cross-motions for summary judgment;

WHEREAS the Court specified in an Order of August 4, 2023 that MARAD was ordered to, within 120 days, "initiate consultation on the FY 2018 James River Project grant;"

WHEREAS Defendants filed a timely appeal of the Court's March 31, 2023 and August 4, 2024 Orders on October 3, 2024 and Plaintiff filed a timely cross-appeal of those same Orders on October 13, 2023;

WHEREAS the Parties voluntarily dismissed the appeal and cross-appeal in December 2023;

WHEREAS on September 14, 2023, Plaintiff filed an unopposed motion to hold any motion for recovery of attorneys' fees and/or costs in abeyance; and

WHEREAS without any admission or final adjudication of the issues of fact or law with respect to Plaintiff's claim for costs of litigation, including attorneys' fees, the Parties have reached a settlement of Plaintiff's claim;

NOW, THEREFORE, in the interests of judicial economy and to avoid the need for further litigation, the Parties, for good and valuable consideration, the adequacy of which is hereby acknowledged, hereby stipulate and agree as follows:

1. Defendants shall pay \$65,000 to settle Plaintiff's entire claim for any and all attorney and expert witness fees, expenses, and costs in the above-captioned matter, pursuant to Section 11(g) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g).

2. Plaintiff accepts payment of \$65,000.00 pursuant to this Stipulated Settlement Agreement in full satisfaction of any and all claims for attorney and expert witness fees, expenses, and costs of litigation in the above-captioned matter, including any claim for fees and costs related to the preparation of Plaintiff's fee application and this Stipulated Settlement

Agreement.

3. Plaintiff agrees that receipt of this payment of \$65,000.00 shall operate as a complete and total release of any and all claims for attorney and expert witness fees, expenses, and costs of litigation that it possesses against the United States, including each named Defendant, in the above-captioned matter incurred through and including the date of this Stipulated Settlement Agreement.

4. Defendants' payment will be made by electronic funds transfer of the agreed-upon settlement amount (\$65,000.00) into the account of Plaintiff identified pursuant to paragraph 5. Plaintiff and its attorneys agree to hold harmless Defendants in any litigation, further suit, or claim arising from the payment of the agreed-upon settlement amount, other than for an allegation of Defendants' breach of this Agreement.

5. Plaintiff agrees to provide to counsel for Defendants within ten (10) business days after the entry of an order approving this Stipulated Settlement Agreement the following information necessary for Defendants to process payment, including but not limited to: the payee's name; the payee's address; the payee's account name; the payee's bank account number; the account type; the Automated Clearing House ("ACH") routing number (for ACH payment) or the American Banking Association ("ABA") routing number for FedWire payment; the financial institution's name, city, and state; the bank routing transit number ("RTN"); and the payee's tax identification number.

6. Defendants agree to submit all necessary paperwork for the processing of the subject payment to the Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. § 1540(g), within ten (10) business days of the court's order approving this Stipulated Settlement Agreement or Plaintiff having submitted the information required by paragraph 5,

whichever is later. Following notification from the Department of Treasury that payment has been completed, Defendants' counsel will notify Plaintiff's counsel that payment was electronically transmitted to Plaintiff's account. Plaintiff will confirm receipt of the payment.

7. Nothing in this Stipulated Settlement Agreement shall be interpreted as, or shall constitute, a requirement that Defendants are obligated to pay any funds exceeding those available or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

8. This Stipulated Settlement Agreement is executed solely for the purpose of compromising and settling Plaintiff's claim for costs of litigation, including reasonable attorney and expert witness fees, in the above-captioned matter. By this Agreement, Defendants do not waive any right to contest fees claimed by Plaintiff or Plaintiff's counsel, including hourly rates, in any future litigation or continuation of the above-captioned matter. Further, this Agreement, including the provisions relating to attorneys' fees and costs, has no precedential value in any other context and shall not be cited in any other litigation except as necessary to enforce the terms of this Agreement.

9. The Parties agree that this Stipulated Settlement Agreement was negotiated in good faith and constitutes a settlement of claims for attorneys' fees and costs that were vigorously contested, denied, and disputed by the Parties.

10. This Stipulated Settlement Agreement shall apply to and be binding upon the Parties, and upon Plaintiff's members, delegates, and assigns. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of this Agreement and to legally bind the Parties represented to it.

11. This Stipulated Settlement Agreement represents the entirety of the Parties' commitments with regard to settlement of attorneys' fees, expenses, and costs in the above-captioned matter. The terms of this Stipulated Settlement Agreement shall become effective upon entry of an order by the Court approving this Agreement.

Dated: January 15, 2025.

Respectfully submitted,

JESSICA D. ABER,
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Attorneys for Plaintiff

PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: January 24, 2025

/s/ 
Elizabeth W. Hanes
United States District Judge

Elizabeth Hanes
United States District Judge